

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN**

Brian Lyngaas,

Plaintiff,

v.

United Concordia
Companies, Inc. et al.,

Defendants.

Case No.: 21-11604

Judge Jonathan J.C. Grey

**ORDER ON PLAINTIFF'S MOTION FOR ORDER TO
BAR DEFENDANT'S EXPERT REPORT (ECF No. 39)**

Plaintiff Brian Lyngaas' motion for order barring expert report (ECF No. 39.) is **DENIED**. Given the history of this case; the parties' filed discovery plan; United States District Judge Stephen J. Murphy III's scheduling order and amended scheduling orders; the parties' prior discussions; and the parties' joint stipulated status report submitted to the undersigned, the Court's scheduling order should have been clear to Lyngaas.

While the Court's order speaks of proponent and rebuttal, it should have been obvious to Lyngaas that those terms referred to the plaintiff and the defendant, respectively. The parties filed a discovery plan on March 9, 2022. (ECF No. 16.) In it, the parties contemplated that plaintiff

would disclose his expert reports first and defendant would disclose its experts about a month later. (*Id.*) All of Judge Murphy's scheduling orders adopted that timeline and provided that plaintiff would supply his expert witness disclosures first and defendant would supply its disclosures about a month later. (*See, e.g.*, ECF No. 22.) Further, the parties' stipulated joint status report, submitted to the undersigned on August 24, 2023, requested that the Court adopt a similar schedule, where plaintiff would provide his disclosures first and a month later defendant would provide the disclosures. The Court's scheduling order adopted the exact dates supplied by the parties. (ECF No. 37.)

The terms proponent and rebuttal could create ambiguity in the absence of any contextual information. However, Lyngaas should have known that the most recent scheduling order (*Id.*) adopted the parties' original plan (*See* ECF No. 16), Judge Murphy's scheduling orders based on that plan, and the stipulated joint status report that was submitted to the undersigned, as the most recent scheduling order contained exact same proposed dates provided by the parties. Equally indicative of the Court's intent was that nothing had changed to alter the parties' plan in between Judge Murphy's most recent scheduling order (ECF No. 34) and

the undersigned most recent scheduling order (ECF No. 37). If either party had questions about the order, they could have sought clarification from the Court. This motion borders on frivolity, but, as there is some ambiguity in the order's language, the motion raises a material issue. However, the parties should seek clarification on ambiguous orders before filing motions.

As a sur-reply brief is no longer required, the Court also **DENIES** United Concordia's motion for leave to file a sur-reply. (ECF No. 44.)

IT IS SO ORDERED.

Date: December 7, 2023

s/ Jonathan J.C. Grey
Hon. Jonathan J.C. Grey
United States District Judge

Certificate of Service

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First-Class U.S. mail addresses disclosed on the Notice of Electronic Filing on December 7, 2023.

s/ S. Osorio
Sandra Osorio
Case Manager